

VERN H. BOLINDER ET AL.

IBLA 74-246

Decided August 26, 1974

Appeal from a decision by the Utah State Office, Bureau of Land Management, denying a petition to reinstate oil and gas lease U-21339.

Affirmed.

Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Mailing the payment six days after the anniversary date is not reasonable diligence, nor is such a delay "justifiable" because of the lessee's lack of knowledge of the law.

APPEARANCES: Vern H. Bolinder pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Vern H. Bolinder appeals from the decision of the Utah State Office, Bureau of Land Management (BLM), dated March 1, 1974, which refused to reinstate oil and gas lease U-21339. The rental payment due date for U-21339 was February 1, 1974. Appellant's envelope containing the rental payment was postmarked February 7, 1974, and received by BLM on February 8, 1974. Since the payment was received after the anniversary date, the lease automatically terminated. Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(b) (1970).

Bolinder timely filed a petition to have his lease reinstated as permitted by the Act of May 12, 1970, 84 Stat. 206, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(c) (1970). He stated:

When your notice arrived, since it showed a due date of February 1, 1974, my secretary placed it in a box of invoices and statements due on February 1st. \* \*  
\* Therefore, I made out my check #1277 on February 6, and mailed it to your office. I had no idea whatsoever, that this would not be perfectly proper and acceptable.

BLM, in denying the petition for reinstatement, found that the delay was not justifiable but was due to a lack of reasonable diligence. 1/

Appellant now asserts that his failure to pay on time was due to a combination of events including his poor eyesight and lack of knowledge of the regulations. He also states:

I have three part-time secretaries who assist me in my office work. One of my girls has the responsibility to sort through my mail and to take care of all Accounts Payable. When the notice arrived, I did not see it.

I maintain an excellent credit rating with Dun[n] and Bradstreet, and I always pay my bills promptly before the 10th of the month. Therefore, with the assistance of my secretary, I prepared my check No. 1277 on February 6th, and mailed it to your Salt Lake City Office.

In order for this Board to reinstate an oil and gas lease terminated because the lessee failed to pay the annual rental on time, the lessee must show that his failure to pay on time "was either justifiable or not due to a lack of reasonable diligence \* \* \*." 30 U.S.C. § 188(c) (1970).

A Departmental regulation says that reasonable diligence

\* \* \* normally requires sending or delivering payments sufficiently in advance of the anniversary date to

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1/ An alternative way at phrasing their finding is that the delay was neither justifiable nor did the lessee exercise reasonable diligence to prevent the delay.

account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

43 CFR 3108.2-1(c)(2). Since appellant did not mail the payment until some six days after the due date, we find he was not reasonably diligent. 2/ Knight & Miller Oil Corp., 13 IBLA 337 (1973); M. A. Schofman, 13 IBLA 205 (1973).

The failure to pay the rental on time is "justifiable" when there is a factor beyond the control of the lessee which is the cause of the late payment. Kenneth F. Santor, 13 IBLA 208, 210 (1973); Louis Samuel, 8 IBLA 268, 274 (1972). In past cases we have held that neither lack of knowledge of the law, Louis Samuel, *supra*, nor failure of an employee to mail the rental payment on time, Leon Alfara Miranda, 15 IBLA 89, 91 (1974); M. A. Schofman, *supra*; is a justifiable excuse. We are sympathetic with appellant's chronic eyesight problem, but it did not create sudden and unexpected difficulties beyond his control. In short, appellant's excuse rests on his lack of knowledge of the consequences of the law in failing to make the rental payment "on or before the anniversary date of the lease," as required. 30 U.S.C. § 188(b) (1970). This is not a "justifiable" excuse under the statute authorizing reinstatement of terminated leases in certain circumstances. 30 U.S.C. § 188(c) (1970). Louis Samuel, *supra*. Therefore, we have no statutory authority to reinstate appellant's lease.

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2/ This Board does not intend any pejorative meaning by expressing our conclusion in these terms. In order to comply with our mandate to decide appeals "as fully and finally as might the Secretary," 43 CFR 4.1, this Board often states its conclusions in terms of the statutes and regulations it administers.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Martin Ritvo  
Administrative Judge

